

EXHIBIT E

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**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

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In re : Chapter 11
Dana Corporation, et al., : 07 Civ. 8160 (SAS)
: 06-10354 (BRL)
: (Jointly Administered)
Debtors :
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**UPDATED PROOF OF CLAIM OF THE UNITED STATES ON BEHALF OF
THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY,
THE NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION OF THE
DEPARTMENT OF COMMERCE, AND THE DEPARTMENT OF THE INTERIOR
ACTING THROUGH THE FISH AND WILDLIFE SERVICE**

1. This Updated Proof of Claim ("Updated Proof of Claim") is filed by the United States at the request of the United States Environmental Protection Agency ("EPA"), National Oceanic and Atmospheric Administration ("NOAA") of the Department of Commerce, and the Department of the Interior acting through the Fish and Wildlife Service ("FWS") (collectively, the "Government"). The Attorney General is authorized to submit this Updated Proof of Claim on behalf of the Government. This Updated Proof of Claim supplements and updates the Government's prior Proof of Claim, filed on September 21, 2006.

2. On September 21, 2006, the Government filed its Proof of Claim, numbered 13796 ("2006 Proof of Claim") in this matter. This Updated Proof of Claim updates the amounts of past costs and estimates of future costs, and reflects additional investigation and evaluation that has been conducted since the 2006 Proof of Claim was filed. This Updated Proof of Claim updates and supplements the Government's 2006 Proof of Claim with respect to the paragraphs enumerated below and supersedes such paragraphs to the extent inconsistent. All other provisions are unaffected.

I. Updated Information Regarding the Hastings Superfund Site

3. Based upon current information, the Government updates Paragraphs 32 and 33 of the 2006 Proof of Claim as follows:

32. In response to the actual and threatened releases of hazardous substances at the Hastings Facility, EPA has incurred, and will continue to incur, response costs that are not inconsistent with the National Contingency Plan, promulgated under Section 105 of CERCLA, 42 U.S.C. § 9605, and set forth at 40 C.F.R. Part 300. Through June 30, 2007, EPA has incurred \$1,208,168.10, in unreimbursed environmental response costs in connection with the Hastings Facility. In addition, through September 30, 2007, the Agency for Toxic Substances and Disease Registry has incurred \$222,839 in performing a health consultation at the Site. EPA expects substantial additional response activities to assess and address contamination fully from the release of hazardous substances at or in connection with the Hastings Site over the next 30 years. As a result of additional, more comprehensive information gathered since EPA filed its 2006 Proof of Claim, EPA conservatively estimates that the cost for such future environmental response activities least will be at least \$37,234,200, including a 20 percent contingency for future costs, to remediate the extensive contamination fully at or from the Facility. The specific cost estimates for certain future environmental response activities that EPA, or its contractors, will have to perform are as follows:

a. Projected Removal Action Costs: Because of the ongoing threat to human health and the environment posed by contamination at the Hastings Facility, EPA will be required to continue with existing removal activities consisting of, among other things, a groundwater pump-and-treat and soil

vapor extraction until approximately March 31, 2012. The cost estimate for performance of these future removal activities is at least \$784,500.

b. Projected Remedial Investigation/Feasibility Study Costs: The cost estimate to conduct the Hastings Facility site-wide, RI/FS is \$3,919,000, including the activities to be performed by EPA's RI/FS contractor for the Hastings Facility, pursuant to an EPA-approved Site Characterization Work Plan and related documents.

c. Projected Remedial Design Costs: Based upon conservative estimates, and consistent with the costs to design similar systems and EPA's work on similar superfund sites, the cost estimate to conduct the work regarding the design of the remedial systems that will be necessary to remediate the contamination is \$1,570,000.

d. Projected Remedial Action Capital Construction Costs: The cost estimate to perform the remedial system capital construction is \$5,020,000 based upon conservative estimates. These costs reflect the future costs for construction of the remedial systems, pursuant to the remedial action to be selected by EPA, as required under EPA's selected remedy to remediate the contamination. These costs also reflect system start-up from approximately April 2010 through June 2012. Aside from the actual construction costs, these costs also include mobilization/demobilization, safety, security, temporary facilities, site preparation, and surveying.

e. Remedial System Operation and Maintenance ("O&M"): Once the remedial system is in place and operational, EPA will continue to incur response costs associated with the O&M of the system. EPA presently estimates that the O&M costs will total \$19,735,000, based on a 30-year time frame for groundwater remediation, and 3-year time frame for soil source area remediation.

33. Because Dana was an owner and operator of the Hastings Facility at the time of disposal of hazardous substances, within the meaning of Section 107(a)(2) of CERCLA, 42 U.S.C. § 9607(a)(2), (in addition to still retaining ownership of the building where the treatment systems are located), Dana is jointly and severally liable to the United States for all unreimbursed response costs incurred and to be incurred by the United States in connection with the Hastings Facility, plus prejudgment interest on such costs. The United States hereby asserts a claim against Dana for all unreimbursed past and future response costs (plus interest) for the Hastings Facility, which are currently estimated to be at least \$38,665,207.

II. Updated Information Regarding the CDE Superfund Site

4. Based upon current information, the Government updates Paragraph 38 of the 2006 Proof of Claim as follows:

38. EPA issued the Record of Decision (“ROD”) for OU1 on September 30, 2003. The OU1 ROD calls for the excavation of soils contaminated with PCBs from certain residential and commercial properties, and the investigation of additional properties to determine which such properties will require remediation. After Dana declined to make an offer to reimburse EPA’s past costs or perform the OU1 work, in August 2004, EPA issued a unilateral administrative order (“UAO”) CERCLA-02-2004-2030 to Dana (and two other parties) to perform the OU1 remedial design and remedial action (“RD/RA”). The Debtor refused to perform the work required under the UAO. As discussed below (in the Section “Injunctive Obligations Under Environmental Statutes”), this Proof of Claim is filed in a protective manner with respect to Dana’s obligation to perform work under the UAO. EPA estimates that it will cost \$5.629 million to perform the OU1 RD/RA, based on the following:

- a. EPA has entered into Interagency Agreement (“IAG”) with the Army Corps of Engineers (“Corps”) for the OU1 RD. To date, pursuant to the IAG, EPA has obligated \$1.25 million for the RD for the first four properties being remediated as part of OU1 remedial activities, and for the investigation of the approximately 56 properties targeted by the ROD for additional sampling. The OU1 ROD states that EPA anticipates that the additional sampling of residential properties will identify 12 properties in need of remediation. Based on the known cost of performing the RD for the first four properties, EPA now estimates that the RD for this next group of 12 properties will cost at least \$1.25 million, for a total cost of \$2.5 million.
- b. EPA has also entered into an IAG for the OU1 RA with the Corps. To date, pursuant to the IAG, EPA has obligated \$1 million for the RA for the first four properties being remediated as part of OU1. Based on the known cost of performing the RA for the first four properties, EPA estimates that the RA for the 12 additional properties will cost at least an additional \$1 million, for a total cost of \$2 million.
- c. EPA estimates that its payroll costs for OU1 will be \$50,000.
- d. The cost estimate for OU1 in the 2006 Proof of Claim was based on an estimate of \$2.5 million for the remedial design, and \$1 million for

the remedial action. The remedial action is likely to cost \$2 million (\$1 million more than previously estimated). With payroll costs of \$50,000, future costs for OU1 are now estimated at \$4.33 million, calculated as follows:

RD	\$2,320,000
RA	\$1,960,000
EPA Payroll	<u>\$50,000</u>
Total (direct costs)	\$4,330,000

e. Accordingly, total future direct costs for OU1 must be adjusted from \$3.5 million to an estimated \$4.33 million.

f. In addition to these direct costs, indirect costs are estimated at 30 percent of that amount, or \$1.299 million. Accordingly, the total estimated future costs for OU1 are \$5.629 million.

5. Based upon current information, the Government updates Paragraph 39 of the 2006 Proof of Claim as follows:

39. On September 30, 2004, EPA issued the ROD for OU2, which addresses contaminated soil and buildings at the former manufacturing property that is part of the CDE Facility. The remedy for OU2 calls for excavation of some contaminated soils and capping of the remainder and demolition of contaminated buildings. The most heavily contaminated soils either will be treated on-site using low temperature thermal desorption or disposed of off-site. Currently, EPA is performing the remedial design for OU2. The cost estimate for performance of the OU2 RD/RA is \$154.73 million, based on the following:

a. EPA has entered into an IAG with the Corps for the RD for the building demolition and soil cleanup. EPA has obligated \$3.5 million under this IAG, of which \$1.3 million has already been incurred and is documented as part of EPA's past costs for the CDE Facility, leaving \$2.2 million as future costs.

b. The \$2 million cost estimate for relocation of tenants at the CDE Facility, which the Government incorporated in its 2006 Proof of Claim, reflects costs actually incurred by EPA and an estimate from the Corps of the remaining costs that will be incurred.

c. The current estimate for building demolition, \$13.7 million, is the budget that EPA has negotiated with the prime contractor for demolition.

d. The OU2 ROD estimate for the cost of the OU2 RA included an estimate of \$62 million for soil remediation. EPA has developed more current estimates, which show that the soil remediation phase will likely cost \$85 million. This includes the cost of excavation of the debris in the capacitor disposal area, and the excavation for treatment and/or off-site disposal of contaminated soil consistent with the requirements of the selected remedy. As with all of EPA's estimates, this updated number remains subject to change when the 100% design report is completed and EPA is able to seek cost estimates from contractors.

e. EPA estimates that the Corps will charge EPA approximately \$8 million for oversight and management of the OU2 RD/RA. EPA future payroll costs for OU2 are estimated to be \$300,000.

f. EPA estimates that the O&M costs for maintenance of the multi-layer cap installed at the CDE Facility as part of the OU2 soil remedy will be \$7.82 million, based on a time frame of 30 years.

g. The cost estimate for OU2 in the 2006 Proof of Claim was based on an estimate of \$2.5 million for the remedial design and \$87 million for the remedial action. Future costs for OU2 are now estimated at \$119.02 million, as follows:

RD	\$2,200,000
Relocation of tenants	\$2,000,000
RA - building demo	\$13,700,000
RA - capacitor disposal/soils	\$85,000,000
OU2 O&M	\$7,820,000
Corps	\$8,000,000
EPA - future payroll	<u>\$300,000</u>
Total (direct costs)	\$119,020,000

h. Total future direct costs for OU2 therefore must be adjusted from \$89.5 million to an estimated \$119.02 million.

i. In addition, indirect costs are estimated at 30 percent of that amount, or \$35.706 million. Thus, the total estimated future costs for OU2 are \$154.73 million.

6. Based upon current information, the Government updates Paragraph 40 of the 2006 Proof of Claim as follows:

40. OU3 addresses contaminated groundwater and associated soil vapor at the CDE Facility. In July 2005, the Debtor entered into an administrative order on consent ("AOC"), CERCLA-02-2005-2024, to perform the remedial investigation/feasibility study ("RI/FS") for OU3. EPA was nearing completion of its review of the draft work plan prepared by the Debtor, when it was advised by the Debtor, by a letter dated May 1, 2006, that the Debtor would cease compliance with the AOC. As discussed below (in the Section "Injunctive Obligations Under Environmental Statutes"), this Proof of Claim is filed in a protective manner with respect to Dana's obligation to perform work. Since investigations at the CDE Facility are continuing and the OU3 remedy has not yet been selected, the cost of the OU3 work is uncertain at this time, but EPA currently estimates that remedial investigation and RD/RA work with respect to OU3 will cost approximately \$44.763 million, based on the following:

- a. EPA estimates that it will incur \$2.865 million for the OU3 RI/FS.
- b. EPA estimates that it will incur \$2.5 million for the OU3 RD.
- c. EPA expects that the preferred remedy for OU3 will include pumping and treatment of the contaminated groundwater pumped from the Site. EPA estimates that the capital costs for the OU3 remedy will be \$8 million.
- d. EPA has estimated that the Long Term Remedial Action/Operation and Maintenance ("LTRA/O&M") for the groundwater remediation system will be conducted over a 100-year period.
- e. EPA has estimated that the annual LTRA/O&M costs will be \$400,000 per year for 100 years, at a present value of \$12.64 million. These costs would include operating and maintaining the extraction wells and the treatment system, conducting the required sampling of monitoring wells and the influent/effluent from the treatment system, and completing all of the reporting requirements.
- f. EPA has determined that it is appropriate to add a contingency amount to the RA capital costs and the LTRA/O&M and has applied a standard 20% construction contingency, adding another \$4.128 million to the total estimated cost of OU3.
- g. In addition, EPA will incur an estimated \$4,000,000 for oversight and management of the RD/RA by the Corps, and \$300,000 for EPA payroll. EPA previously estimated that it would incur costs of \$25 million

for OU3, including the RI/FS, RD/RA and LTRA/O&M. Future costs for OU3 are now estimated at \$34,433,000, as follows:

OU3 RI/FS	\$2,865,000
OU3 RD	\$2,500,000
OU3 RA	\$8,000,000
OU3 O&M	\$12,640,000
20% contingency	\$4,128,000
Corps	\$4,000,000
EPA Payroll	\$300,000
Total (direct costs)	\$ 34,433,000

h. Total future direct costs for OU3 therefore must be adjusted from \$25,000,000 to an estimated \$34,433,000. Indirect costs are estimated at 30 percent of that amount, or \$10,329,900; for a total of \$44,762,900.

7. Based upon current information, the Government updates Paragraph 41 of the 2006 Proof of Claim as follows:

41. OU4 at the CDE Facility addresses the contaminated sediments in the Bound Brook corridor. Since investigations at the Facility are continuing and the final remedy has not yet been selected, the cost of the OU4 work is uncertain at this time, but EPA currently estimates that remedial investigation and RD/RA work with respect to OU4 will cost approximately \$108.22 million, based on the following.

- a. EPA estimates that it will incur approximately \$2.5 million to complete the OU4 RI/FS.
- b. EPA estimates that it will incur \$2.5 million for the OU4 RD.
- c. EPA estimates that the capital costs for the OU4 remedy will be \$57.4 million.
- d. EPA also expects to incur costs for Long Term Remedial Action/Operation and Maintenance ("LTRA/O&M") EPA estimates that the annual LTRA/O&M costs will be \$500,000 per year for 10 years, at a present value of \$4,265,000.
- e. EPA has determined that it is appropriate to add a contingency amount to the RA capital costs and LTRA/O&M costs and has applied a

standard 20% construction contingency, adding another \$12.333 million to the total estimated cost of OU4.

f. In addition, EPA will incur an estimated \$4,000,000 for oversight and management of the RD/RA by the Corps, and \$250,000 for EPA payroll. EPA previously estimated that it would incur costs of \$55 million for OU4, including the RI/FS, RD/RA and LTRA/O&M. Future costs for OU4 are now estimated at \$83,248,000, as follows:

OU4 RI/FS	\$2,500,000
OU4 RD	\$2,500,000
OU4 RA	\$57,400,000
OU4 O&M	\$4,265,000
20% contingency	\$12,333,000
Corps	\$4,000,000
EPA Payroll	<u>\$250,000</u>
Total (direct costs)	\$83,248,000

g. Total future direct costs for OU4 therefore must be adjusted from \$55,000,000 to an estimated \$83,248,000.

h. In addition, indirect costs are estimated at 30 percent of that amount, or \$24,974,400. Accordingly, the total estimate future costs for OU4 are \$108,222,400.

8. Based upon current information, the Government updates Paragraph 42 of the 2006 Proof of Claim as follows:

42. In response to the actual and threatened releases of hazardous substances at the CDE Facility, EPA has incurred, and will continue to incur, response costs that are not inconsistent with the National Contingency Plan, promulgated under Section 105 of CERCLA, 42 U.S.C. § 9605, and set forth at 40 C.F.R. Part 300. Past costs incurred by EPA and accounted for in EPA's accounting system, as documented in the Superfund Cost Recovery Package Imaging and On-Line System ("SCORPIOS") Report for the Site covering the time period through November 30, 2006, are \$8,621,543.

9. Based upon current information, the Government updates Paragraph 43 of the 2006 Proof of Claim as follows:

43. EPA expects substantial additional response activities will be necessary to fully assess and address contamination from the release of hazardous substances at or in connection with the CDE Facility. As noted above, EPA presently estimates that the future costs for performance of the OU1 RD/RA are \$5.629 million, and that the future costs for performance of the OU2 RD/RA are \$154.731 million. Investigations at the CDE Facility are continuing with respect to OU3 and OU4. Although the cost of the OU3 and OU4 work is uncertain at this time, EPA presently estimates that remedial investigation and RD/RA work with respect to OU3 and OU4 will cost approximately \$152.985 million. See Paragraphs 40 and 41, supra (\$44.763 million plus \$108.222 million).

10. In all respects other than as set forth above, the 2006 Proof of Claim remains in effect.

CONCLUSION


11. Accordingly, pursuant to its Updated Proof of Claim the Government is entitled to an allowed claim of at least \$360,631,050 for the Hastings and CDE Superfund Sites.

Respectfully submitted,

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